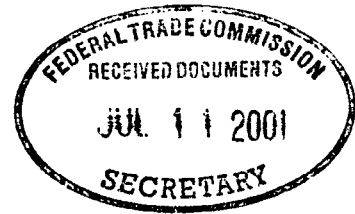


UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of)
)

Schering-Plough Corporation,)
a corporation,)

Upsher-Smith Laboratories,)
a corporation,)

and)
)

American Home Products Corporation,)
a corporation.)

Docket No. 9297

**ORDER DENYING COMPLAINT COUNSEL'S
MOTION FOR ISSUANCE OF A SUBPOENA**

On June 25, 2001, Complaint Counsel filed a motion for the issuance of a subpoena *duces tecum* to an employee of a company located outside of the jurisdiction of the Federal Trade Commission. Complaint Counsel's motion is filed pursuant to Rule 3.36 of the Commission's Rules of Practice which requires a party seeking the issuance of a subpoena to be served in a foreign country to file a motion demonstrating that the requirements of Rule 3.36(b) have been met. 16 C.F.R. § 3.36. Complaint Counsel has represented that, while this individual is outside the Federal Trade Commission's jurisdiction, he has agreed to accept service of process of the subpoena *duces tecum*. Complaint Counsel has further represented that the respondents do not oppose the issuance of the requested subpoena. The deadline for filing any opposition to the motion was July 5, 2001.

Rule 3.36(b) of the Commission's Rules of Practice require the party seeking issuance of a subpoena to make a specific showing that:

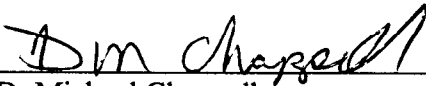
- (1) the material sought is reasonable in scope;
- (2) the material sought is reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent;

- (3) the information or material sought cannot reasonably be obtained by other means; and
- (4) with respect to subpoenas to be served in a foreign country, that the party seeking discovery has a good faith belief that the discovery requested would be permitted by treaty, law, custom or practice in the country from which the discovery is sought and that any additional procedural requirements have been or will be met before the subpoena is served.

16 C.F.R. § 3.36(b).

Complaint Counsel cites to the Commission's "new Rule 3.36" and states that the rule requires that any subpoena served abroad must meet three requirements: (1) material must be reasonable in scope; (2) material must be reasonably relevant; and (3) material cannot reasonably be obtained by other means. However, the new and current rule has a fourth requirement, as stated above. Complaint Counsel's motion contains no reference to the fourth requirement of Rule 3.36(b). Because Complaint Counsel failed to make any representation as to whether it has a good faith belief that the discovery requested would be permitted by treaty, law, custom or practice in the country from which the discovery sought and that any additional procedural requirements have been or will be met before the subpoena is served, it has failed to comply with the requirements of Rule 3.36(b). Accordingly, Complaint Counsel's motion for issuance of a subpoena is DENIED WITHOUT PREJUDICE.

ORDERED:


D. Michael Chappell
Administrative Law Judge

Date: July 11, 2001